

**ASSEMBLY BILL**

**No. 2727**

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**Introduced by Assembly Member La Malfa**

February 22, 2008

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An act to add Section 524 to the Evidence Code, and to add Part 10.1 (commencing with Section 15706) to Division 3 of Title 2 of the Government Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2727, as introduced, La Malfa. Taxation: state agencies: burden of proof.

Existing law imposes various taxes that are administered and collected by various state agencies. Existing law also provides that the burden of proof, for specified issues in court proceedings for purposes of those tax laws, rests with the taxpayer.

This bill would provide, for purposes of the taxes and fees administered by the State Board of Equalization, that the board shall have the burden of proof, by clear and convincing evidence, in sustaining its assertion of penalties for intent to evade or fraud, as provided, in any proceeding, other than a criminal proceeding, with respect to a factual or legal issue related to ascertaining the tax liability of a taxpayer.

This bill would also provide that any state agency that collects and administers taxes shall have the burden of proof in any court or administrative tax proceeding, or in any evaluation of tax compliance conducted by a state agency with respect to any factual issue relevant to ascertaining the tax liability of a cooperating taxpayer.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 524 is added to the Evidence Code, to read:

524. (a) Notwithstanding any other provision of law, in any proceeding, in which the State Board of Equalization is a party, that board shall have the burden of proof by clear and convincing evidence in sustaining its assertion of penalties for intent to evade or fraud against a taxpayer, with respect to any factual or legal issue relevant to ascertaining the liability of a taxpayer.

(b) Nothing in this section shall be construed to override any requirement to substantiate any item on any tax return filed with the State Board of Equalization.

(c) This section shall not apply to any criminal proceedings.

(d) Nothing in this section shall subject a taxpayer to unreasonable search or access to records in violation of the United States Constitution, the California Constitution, or any other law.

SEC. 2. Part 10.1 (commencing with Section 15706) is added to Division 3 of Title 2 of the Government Code, to read:

#### PART 10.1. BURDEN OF PROOF

15706. (a) A state agency that collects and administers taxes shall have the burden of proof in any court or administrative tax proceeding or any evaluation of tax compliance conducted by employees, contractors, or agents of the state agency, with respect to a factual issue related to ascertaining the tax liability of a cooperating taxpayer.

(b) For purposes of this section:

(1) "Administrative tax proceeding" means any of the following:

(A) For disputes concerning taxes collected by the State Board of Equalization, the hearing before the members of the State Board of Equalization.

(B) For disputes concerning taxes collected by the Franchise Tax Board, the hearing before the members of the State Board of Equalization.

(C) For disputes concerning taxes collected by the Employment Development Department, the hearing before the Unemployment Insurance Appeals Board.

1 (2) “Cooperating taxpayer” means a taxpayer who satisfies all  
2 of the following requirements:

3 (A) Has complied with all relevant statutory, regulatory, or case  
4 law substantiation requirements to substantiate any item on any  
5 tax return filed with a state agency.

6 (B) Has maintained all records as required by the Revenue and  
7 Taxation Code, or any rules or regulations issued by a state agency,  
8 and, upon a reasonable request by the state agency, has provided  
9 those records to the state agency.

10 (C) Has provided credible evidence to the state agency with  
11 respect to any factual issue relevant to ascertaining the tax liability  
12 of the taxpayer.

13 (3) “State agency” means the Franchise Tax Board, the State  
14 Board of Equalization, or the Employment Development  
15 Department.

16 (4) “Tax liability” means any tax assessed by a state agency,  
17 including any interest charge or penalties levied in association  
18 with the tax.

19 (c) Unless provided otherwise, the burden of proof upon state  
20 agencies for purposes of this part shall be a preponderance of the  
21 evidence.

22 (d) This section does not apply to an adjustment proposed and  
23 made to a taxpayer’s federal income tax return by the federal  
24 government.

25 (e) Nothing in this section shall subject a taxpayer to  
26 unreasonable search or access to records in violation of the United  
27 States Constitution, the California Constitution, or any other law.

28 (f) This section shall apply only to court and administrative tax  
29 proceedings involving determinations issued on or after the date  
30 on which this act becomes operative.